Merge, Bail, and Make Out Like a Bandit

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Corporate America prides itself on rewarding success and punishing failure. Yahoo CEO Marissa Mayer does not fit comfortably into that narrative. During her five-year tenure at the once-proud tech firm, user levels stagnated, ad revenue dropped, acquisitions cratered, layoffs accelerated, product quality floundered, and hackers stole the personal information of more than one billion users.

But when Yahoo's sale to Verizon becomes official in June, with the restructured company renamed Oath, Mayer will walk away with $186 million, according to a regulatory filing released this week. That includes shares of Yahoo stock Mayer owned, stock options, and a $23 million "golden parachute" of cash, restricted stock units, and medical benefits. Mayer did relinquish $14 million while taking responsibility for the Yahoo Mail data breach, but she'll get 13 times that amount just to no longer remain part of the company.

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Mayer's award is not merely an indictment of short-term thinking in executive boardrooms, which prioritizes increasing stock prices (the one thing Yahoo achieved) over creating a decent company. It reflects a real problem with executive compensation, which favors the very kind of corporate consolidation that is distorting our economy. Under current practices, CEOs have a deep financial interest in merging their companies. Their spectacular bonuses serve as a kickback for concentrating power in fewer and fewer hands.

You often hear about golden parachutes as an inducement to get a scandal-plagued executive (or a top figure like Bill O'Reilly) to exit a company. But they were designed in the 1980s to facilitate mergers and acquisitions. Known in corporate-speak as "change in control agreements" (CICs), these provisions protected top executives by mandating payments if they lost their job through a merger. From 1980 to 2000, about 70 percent of the largest 1,000 U.S. firms adopted CICs.

The new compensation standards naturally served to weaken resistance to hostile takeovers, as bundles of cash took the sting out of the loss of employment and prestige. Indeed, a 2012 study from Alma Cohen, Charles Wang, and Lucian Bebchuk confirms that companies offering golden parachutes are more likely to be acquired in a merger. But the authors also found that the value of companies that provide golden parachutes declines over time, and a separate study showed that CEOs with golden parachutes made worse acquisition deals than their counterparts.

CEOs used to take self-satisfaction in their companies. Back in 1985, former Revlon CEO Michel Bergerac called the golden parachute offered in a merger deal with Pantry Pride a bribe to facilitate “shafting my shareholders.” But today’s executives appear to be more concerned with chasing the pot of gold at the end of the M&A rainbow.

The numbers are staggering. The CEOs of Dow and DuPont stand to gain $80 million in golden parachute payments when their merger closes. Six executives at B/E Aerospace will share $88 million upon sale of the company to Rockwell Collins. Monsanto CEO Hugh Grant’s golden parachute from a deal with Bayer could reach $77 million. Robert Marcus, who ran Time Warner Cable for a little over a year, became eligible for $85 million when Charter Communications bought the company out in 2015. Between 2000 and 2011, 21 CEOs received golden parachutes totaling more than $100 million each.

Even when the deals don’t go through, we learn about the arrangements CEOs enjoy. Office Depot’s Roland Smith would have gotten $39 million if a merger with Staples hadn’t been blocked. Baker Hughes CEO Martin Craighead was due $29 million from a proposed deal with Halliburton; when that fizzled, a subsequent merger into General Electric’s energy unit netted Craighead an even larger $41 million. Aetna’s CEO Mark Bertolini was in line for $131 million before the proposed merger with Humana fell through.

I recite these numbers to give a sense of how much money is being devoted to paying off chief executives. Golden parachutes have become a measuring stick for the 1 percent of the 1 percent, a perk they can wear with pride. These contractual agreements are negotiated long before any merger, but they lurk in the background, as part of the extreme financial incentives to make deals.

You’d find it hard to discern any relationship between the merit of these executives and their golden parachute awards. Some of them accomplished a lot on the job; others barely even kept the chair warm before running for the exits. The point is that these payments have become enduring features of our corporate landscape—walking around money for the concentration of power. In fact, the provisions may drive decisions about executive compensation more broadly. T-Mobile, known to be seeking suitors, recently boosted the pay of its chief operating officer, which would have a material effect on his golden parachute payout.

Despite public outcry at golden parachutes, Congress has proven utterly incapable at slowing them down. In 1984, a tax change zeroed out tax benefits for golden parachutes that were more than three times base compensation. Companies responded by awarding 2.99 times compensation in the contracts, or agreeing to pay the executive’s tax penalty. The disastrous

1993 Clinton executive compensation changes, making base salary of more than $1 million non-deductible in taxes, pushed compensation largely into stock awards. Golden parachutes also trended toward stock, making mergers that boost share prices seriously attractive to CEOs. The Dodd-Frank Act's "say on pay" provision forces a shareholder vote on golden parachutes like Marissa Mayer's, but these votes are non-binding, and rarely go against the company.

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The problem is that politicians don't even understand why we should discourage these payments (or in my view, outright eliminate them). When you create a system where decision-makers can earn hundreds of millions of dollars simply by agreeing to mergers, then mergers will obviously flow. As companies merge, competition falls away and oligopolies form. And this market concentration, present in practically every sector of the economy, stunts innovation, degrades quality of service, increases inequality, and centralizes political power.

The post-recession era has been characterized by a lack of dynamism and entrepreneurship, largely because of the influence of the dominant corporations in their industry to horde profits. And any CEO who wants to challenge one of these corporations has to think about how much money could cascade down upon him or her simply by agreeing to be bought. Golden parachutes aren't just obscene because of the nine-figure payouts—though that's part of it. They represent a structural framework inside corporate America that is strangling the economy, while the boys and girls in the C-suites make away with the loot.